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In The

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 1395.

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY,

Petitioner,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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In our Petition we showed that a consideration of the defenses to the union's Complaint in the case at bar necessarily involved the interpretation or application of the collective bargaining agreements received in evidence and that such issues were therefore properly within the primary, exclusive jurisdiction of the National Railroad Adjustment Board under Section 3 First (i) of the Railway Labor Act, as a consequence of which the courts below erroneously assumed jurisdiction.

The Brief of Respondent in opposition ignores the question presented in the Petition and the jurisdictional issue in the case at bar, the Brief being limited to an argumentative statement of the merits of the contract dispute.

Respondent does not cite any authority on the jurisdictional issue, but merely argues in favor of its interpreta-

tion of the collective bargaining agreements, saying that the 1943 national diesel agreement survived the 1953 local schedule agreement as a basis for the injunction entered against the Shore Line in the District Court.

A clearly defined contract dispute admittedly existed in the case at bar over whether the firemen's work rule on the Shore Line was carried forward in 1953 from prior local and national agreements. In order to resolve the dispute on the merits it was necessary for the courts below to interpret the 1953 agreements. Thus, in the next to last paragraph of its opinion, the Court of Appeals said that "We have read the contract provision relied upon by Appellant and find ourselves in general accord with the District Judge's interpretation set forth above * * *" (Appendix A to the Petition at page 13).

Respondent's discussion of Arbitration Award 282 on pages 4 through 7 of its Brief merely confuses the question presented. This issue was a necessary element of the union's cause of action and was briefed in the courts below, but was not raised by Petitioner in the Petition herein. The sole issue before this Court is whether the District Court erroneously assumed jurisdiction of a contract dispute over the interpretation or application of a collective bargaining agreement.

Respondent argues further on the merits at pages 5 and 6 of its Brief that the Shore Line's contract defense in the case at bar is not well taken for the reason that the Court of Appeals in *Brotherhood of Railroad Trainmen v. Akron & Barberton Belt Railroad Company*, 385 Fed. 2d 581 (1967), held that the national diesel agreement was not set aside by Arbitration Board 282. As noted above, the question presented in the Petition in the case at bar is limited to the jurisdictional issue, but in order to avoid confusion on the merits, we respectfully point out that the allegations and defenses raised in the case at bar were

not before the Court of Appeals in the *Akron* case and that Court was referring to the 1950 national diesel agreement, to which the Shore Line was not a party, rather than to the 1943 agreement relied upon by Respondent in the case at bar. Further, the fact that the Shore Line was not a party to the 1950 national diesel agreement was consistent with the omission of the firemen's work rule from the 1953 local schedule agreement.

At page 7 of its Brief, Respondent argues that the Shore Line asserted its defense on the merits for the first time in the District Court. This statement is irrelevant to the jurisdictional issue and it is also unsupported by the evidence; but in any event the Shore Line was the Defendant in the District Court and it was therefore obviously unnecessary for it to assert any defense until such time as a suit had been brought against it.

Respondent's reference to litigation between the parties in this Court last year is also irrelevant inasmuch as that case did not involve the jurisdictional issue raised herein. If the Shore Line has been guilty of bad faith as Respondent contends, then facts in support of this statement should be brought to the attention of the Adjustment Board having jurisdiction of the contract dispute between the parties.

For the reasons stated herein and in our Petition, a writ of certiorari should be granted.

Respectfully submitted,

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